IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8288 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

GUJARAT PETROLEUM EMPLOYEES UNION

Versus

O N G C LTD

---

Appearance:

MR TR MISHRA for Petitioner

MR RAJNI H MEHTA for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

---

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 01/05/2001

C.A.V. JUDGEMENT

#. The prayer of the petitioner in this petition is for a writ of mandamus directing the respondent no.1 ONGC Corporation to treat the employees in Annexure-'A' as direct employees of the respondent no.1 in view of the Notification issued by the Government of India Annexure-'F'. There is further prayer for direction to

the respondent no.1 to grant regular time scale of pay and other benefits which the regular employees of the ONGC Corporation are entitled.

#. The averments in the petition are that nine persons named in Annexure-'A' are working with the respondent no.1 from various dates given thereunder as Drivers/Winch Operators, Helpers (unskilled and semiskilled). All these categories are prohibited by the Notification dated 8-9-1994 issued by the Government of India abolishing contract labour and prohibiting employment of contract labour in various works specified in the schedule annexed thereto in the establishment of ONGC vide Annexure-'F'. It is also averred that the respondent no.1 has issued circular that, those who are not covered or protected by any order of the Court/High Court should be discontinued. A reference has been made to various orders passed by this Court in various Special Civil Applications.

#. No counter affidavit has been filed by the respondent no.2.

#. Respondent no.1 has filed counter affidavit raising various objections as to the maintainability of this petition and also on the factual side denying that the nine persons are direct employees of this respondent or that they were employed by the respondent no.1. On the other hand, it is said that they were employed by the contractor from time to time and the last contract given to the contractor came to an end on 31-7-2000. It is also alleged in the counter affidavit that the petition is not maintainable and deserves rejection. It is also said in the counter affidavit that the Notification does not apply because the nine persons mentioned in the petition are employees of the contractor and not the employees of the Corporation, respondent no.1.

#. Shri TR Mishra, learned counsel for the petitioner and Shri Rajni H.Mehta, learned counsel for the respondent no.1 were heard and the material on record was examined. Since, no counter affidavit was filed by the respondent no.2, nothing can be said about the stand of this respondent. From Para-8.1 of the counter affidavit of the respondent no.1, it transpires that the contract of the respondent no.2 came to an end on 31-7-2000. It is for this reason that the said contractor, respondent no.2 has neither filed any counter affidavit, nor has put in appearance.

#. Shri TR Mishra vehemently argued that disputed

questions of facts are involved in this petition which can not be decided by this Court in exercise of jurisdiction under Art.226 of the Constitution of India and that such disputes can only be decided by the Labour Court/Industrial Tribunal and this is possible only when conciliation proceedings are commenced and after submission of failure report, the appropriate government may refer the dispute to the Labour Court/Industrial Tribunal and then the Labour Court or Industrial Tribunal may be able to decide these factual disputes after entertaining evidence and hearing the concerned parties. For that, he has referred various orders passed by this Court from time to time vide Annexures-'B', 'C', 'D' and 'E'. Thus, in effect, Shri Mishra has given up the prayer that mandamus can be issued by this Court directing the respondent no.1 to treat the employees mentioned in Annexure-'A' as direct employees of the respondent no.1 and that further direction can be issued by this Court to the respondent no.1 to grant them regular scale of pay and other benefits which the regular employees of the Corporation, respondent no.1 are entitled.

#. At the outset, Shri Rajni H.Mehta, learned counsel for the respondent no.1 did not agree that the employees of the petition may be directed to approach Conciliation Officer, nor did he agree to the model orders contained in Annexures-'B', 'C' 'D' and 'E'. Shri Mishra, however, argued that these orders were passed after hearing the learned advocates for the parties, and as such, in the interest of justice, similar order is required to be passed in this petition.

#. Annexure-'B' shows that nothing was observed by this Court regarding merits of the case in Special Civil Application No.11250/98. On the other hand, the petition was disposed of on the ground that the ends of justice would be met if the petition is disposed of by giving directions-(a) to (e). In this way, this is not an order passed on the basis of consent of the parties.

#. Order Annexure-'C' is, however, an order passed on the consent of the learned counsel for the parties. It is observed in this order passed in Special Civil Application No.5519/99 that, the learned advocates relied upon the order dated 19-8-1998 in Special Civil Application No.6355/97 they requested that similar order be made on this petition. Thus, this was an order passed with the consent of the parties, and since Shri Mehta is not a consenting party, such order can not be passed in this petition nor the said directions can be incorporated

in this judgment.

##. Annexure-'D' is also not an order on consent, but here also, the Court observed that, without going into the controversy between the parties if directions are issued, the same would not cause any serious prejudice to the parties and the same will resolve the dispute between the parties. Accordingly, similar directions were given.

##. In Annexure-'E', directions were given on the consent of the learned counsel for the parties.

##. After looking to the counter affidavit, it transpires that disputed questions of facts are involved for adjudication viz. whether the nine persons are working as Drivers and Helpers as indicated in Annexure-'A'. It is denied by the respondent no.1 that these persons were employed by the Corporation to work as Drivers and Helpers (unskilled and semiskilled). On the other hand, the stand is that, they were employed by the contractor and it was purely contractual transaction, and since the contract was terminated on 31-7-2000, these persons can not be said to be either employees of the contractor now, nor employees of the Corporation, because, they were not employed through regular recruitment process as contained in the Recruitment Rules made by the Corporation. However, this is also a disputed question of fact, in what capacity these nine persons were employed either by the contractor or by the Corporation, and if they were employed as such by the contractor, whether they can be treated to be regular employees of the Corporation in view of the Notification Annexure-'F'. These matters also require evidence which can not be entertained by this Court under Art.226 of the Constitution of India.

##. In the synopsis, the petitioner has mentioned that in the year 1998, internal circular had been issued by the respondent no.1 to terminate the services of those who are not covered by any order of either any Court, Tribunal or High Court.

##. In counter affidavit Para-7, it has been deposed that the deponent has no knowledge of any such internal circular having been issued by the ONGC and the petitioners have not annexed the same to the petition. Consequently, it is also to be decided as a question of fact, whether such circular was issued by the respondent no.1 in the year 1998. If, it is found that no such circular was issued, there can not be any apprehension to these nine persons that their services will be

terminated. If, however, such circular was issued, then there is no reason why for a period of two years no action was taken by these employees in filing their writ petitions.

##. If the petition itself is not maintainable, direction to maintain status quo as contained in the model judgments/orders can not be passed during pendency of proceedings, conciliation, reference and before the Tribunal. These nine persons have equally efficacious remedy, inasmuch as, these disputed questions can be decided only by the Industrial Tribunal or Labour Court and not by this Court. If, they want to approach the said authority, they are free to do so, but, no interim direction for maintaining the status quo can be granted against the respondent no.1, who has come out with clear stand that these nine persons are not their employees. These nine persons have not filed any prima facie material except making allegation in the petition that they were actually employed by the respondent no.1 as Drivers and Helpers. Consequently, the writ petition has to be dismissed.

##. I do not agree with the suggestion of Shri Mishra that similar order may be passed in this case as contained in model orders Annexures-'B', 'C' 'D' and 'E'.

##. In the result, the petition is dismissed. No order as to cost.

May 01, 2001. [ D.C. Srivastava, J.]

Shri TR Mishra requests for extension of interim relief. Request is declined.

May 01, 2001. [ D.C. Srivastava, J.]